

FACTFINDING REPORT AND RECOMMENDATIONS

In the Matter of Factfinding)	
)	
involving)	
)	
CALIFORNIA STATE UNIVERSITY)	PERB IMPASSE
)	NO. LA-IM-3386-H
Employer,)	
)	DATE ISSUED:
and)	
)	
UNITED AUTO WORKERS)	April 17, 2007_
)	
Union.)	

Factfinding Panel:

Impartial Chairperson:

Walter F. Daugherty, Arbitrator/Factfinder
P.O. Box 4386
Valley Village, CA 91617-0386

Employer Member:

Sam Strafaci, Assistant Vice Chancellor, Human Resources
California State University
401 Golden Shore
Long Beach, CA 90802-4210

Union Member:

Ray Ruiz, International Representative
United Auto Workers, Region 5
6500 South Rosemead Blvd.
Pico Rivera, CA 90660-3532

Appearances:

For the Employer:

Joel L. Block
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For the Union:

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INTRODUCTION

The California State University ("Employer" or "CSU") consists of more than 20 campuses located throughout the state of California. Most of its represented employees are in systemwide bargaining units; included in the Employer's bargaining units is Unit 11.

The United Auto Workers ("Union") was certified by PERB as the exclusive representative for Unit 11 in August 2004. In June 2005, the parties reached agreement on an initial collective bargaining agreement that was subsequently ratified. Included in this Agreement is Article 9, Fee Waiver, that, *inter alia*, defines "fee waiver," provides that no fee waiver will be implemented in fiscal year 2005/2006, and that the fee waiver implementation in fiscal year 2006/2007 "will be at the discretion of the CSU subject to the administration's determination that it has received funding sufficient to implement the cost of this benefit" (U. Ex. A, Article 9.1 and 9.2).¹

By email dated July 1, 2006, the Union asked if it were the CSU's intent to implement the fee waiver provisions of Article 9 for fiscal year 2006/2007. In an email response dated July 12, 2006, the CSU's Representative stated that "the CSU administration has determined that it will not provide the fee waiver benefit specified in provision 9.1 of the contract in fiscal year 2006/2007" (U. Ex. C). Pursuant to the relevant contractual provisions, bargaining was initiated on the question of whether fee waivers would be implemented for bargaining unit employees in fiscal year 2006/2007. At some point an impasse was declared and the matter was referred to mediation. As mediation was not successful, the dispute was referred to factfinding. The parties

¹Union and Employer exhibits will be referenced as "U. Ex.__" and "E. Ex.__," respectively

jointly selected Walter F. Daugherty as the neutral Chairperson of the Factfinding Panel; Ray Ruiz was designated as the Union's Panel Member, and the Employer designated Sam Stafaci as its Panel Member.

It should be noted that at the request of the Chairperson, both parties waived the statutory time limits for the hearing and the completion of the factfinding process. Hearings were held on April 6 and April 9, 2007, during which both parties were afforded full opportunity to present evidence and argument regarding the dispute. The Factfinding Panel met in an executive session following the close of the hearing on April 9, 2007. On April 10 the Chairperson by facsimile transmission forwarded copies of the Report and Recommendations to the partisan Panel Members for review. Following a requested extension, the Panel Members were given until the close of business April 17 for the submission of any concurring and/or dissenting opinions. Any such opinions timely submitted are attached.

ISSUE

The issue jointly submitted to the Factfinding Panel is as follows:

The dispute centers around whether to provide a fee waiver benefit and, if so, how much (E. Ex. A).

DISCUSSION AND ANALYSIS

The Academic Student Employees Unit, Unit 11, consists of some 6,000 student employees in the classifications of Teaching Associate ("TA"), Graduate Assistant ("GA"), and Instructional Student Assistant ("ISA"). These employees are all temporary part-time and as a condition of employment must be enrolled as CSU students; TA's and GA's must be enrolled in graduate level programs and ISA's are primarily CSU undergraduates. While differences are

noted in the respective job descriptions, these employees provide tutoring, grading, and teaching services in support of faculty members.

Bargaining unit employees are required to pay the standard fees assessed students by the CSU. These fees consist of two parts: the State University Fee ("SUF") currently \$2,520 per academic year for undergraduates enrolled in 6.1 units or more and \$1,464 per academic year for those students enrolled in six units or less. The State University Fees charged to graduate students are some 20 percent higher. The second fee component is the campus-based fees that vary by campus and average about \$680 for the academic year. In addition, out-of-state and foreign students pay "tuition" of \$226 per quarter unit or \$339 per semester unit (U. Ex. O).

The Union's proposal for settlement is as follows:

Effective with the commencement of the 2006/07 Academic Year, the University shall waive full State University and campus fees and tuition for bargaining unit employees with a total combined bargaining unit time-base appointment(s) of 20% (or 128 hours per semester) or more on semester campuses and 25% (or 110 hours per quarter) or more on quarter campuses (U. Ex. S).

The Employer proposes that no fee waiver be provided in the 2006/2007 fiscal year.

In considering the parties' respective positions, it is first noted that the Union points to the bargaining history and what the parties had agreed to in Article 9 as support for its demand for a fee waiver. However, the impasse before the Factfinding Panel arose out of a specific reopener provision that provided for negotiations in the event the CSU did not implement the fee waiver in fiscal year 2006/2007. As such, the question of whether the fee waiver is to be implemented in fiscal year 2006/2007 and its amount is essentially before the Panel *de novo*.

Review of the record evidence reveals that the Union's fee waiver proposal represents a significant cost item, for the waiver of these fees paid by Unit employees represents a decrease in the CSU's revenue stream. While the fee waiver may not represent a direct salary payment, it is properly viewed as one element of the total compensation package that would be provided to bargaining unit employees. The compensation base for Unit 11 is \$34.8 million for fiscal year 2006/2007 (E. Ex. R). If all bargaining unit employees eligible for the fee waiver under the Union's proposal were enrolled full-time (6.1 or more units), the cost as reflected by the loss of these fees would be some \$14.6 million for fiscal year 2006/2007. This equates to about a 42 percent increase in the bargaining unit's total compensation base. It is acknowledged that this is the "worst case" scenario. However, even if the number of full-time bargaining unit students were reduced by half, the increase in the compensation base would still exceed 25 percent. These estimates do not include the fiscal impact of the waiver of out-of-state tuition and fees that the Union also proposed.

The Chairperson notes that the Employer has not raised an inability to pay defense and that its position here manifests what may be characterized as an unwillingness to pay what is a substantial increase in the Unit's total compensation. In such regard, it is emphasized that bargaining with respect to Unit 11 does not occur in a vacuum, for the Employer bargains with a number of other bargaining units and Unions. The reality of public sector bargaining is that to avoid union "whip saw" bargaining strategies employers in large multi-unit jurisdictions rarely give compensation increases to one union that are significantly larger than the pattern settlement. While as pointed out by the Union, the salary increases recently negotiated with the Faculty Unit exceed the funds provided in the "Governor's Compact," it does not appear that any CSU

bargaining unit was given a total compensation increase of the percentage here sought by the Union. Indeed, the percentage increase in Unit II's total compensation that flows from the Union's fee waiver proposal far exceeds any such increase in the California public sector of which the Chairperson is aware. It is noted further that no other CSU bargaining unit receives a fee waiver comparable to that proposed by the Union and that bargaining with some units has been ongoing for some 25 years.

The comparative data and information submitted by the Union as to the relevant fee waiver practices at other universities has been carefully considered. This information shows that fee waivers are in place at the five universities where teaching assistants are unionized included in the survey of CSU and UC faculty salaries (U. Ex. K). The genesis of any such benefit, however, cannot be precisely determined and it appears that this benefit is to some extent external to the collective bargaining agreement at the UC system and the University of Wisconsin at Milwaukee. Further, whatever may be the extent of the practice in the academic community regarding fee waivers, it does not appear that fee waivers are customarily given to undergraduates as the Union here proposes. And, as pointed out by the Employer, the makeup of the bargaining unit at the UC system differs from Unit 11, for most UC employees are doctoral students, whose employment is of much longer duration than this Unit's employees and generally in a research environment.

The Chairperson's review of the comparative data fails to disclose a persuasive basis on which to recommend that the Union's fee waiver proposal be adopted. This is particularly so given the substantial increase in the Unit's total compensation as discussed above and that review of language ultimately included in any negotiated agreement gives no clue as to the tradeoffs that

may have been made to secure its adoption. Again, while the comparative data has been considered, on balance it does not provide a sufficient basis on which to recommend the adoption of the Union's fee waiver proposal.

The Chairperson agrees with the Union that the employment relation of the Unit 11 employees is unique as they are the only employees of the CSU system that must be enrolled as CSU students as a condition of employment. The fee waiver is therefore of substantial concern to the bargaining unit members, who, as pointed out by the Union, are comparatively low paid and provide an invaluable service to the CSU and its students. As such, the Union's "equity" arguments, to wit, that the bargaining unit employees barely make a living wage after education fees are expended and the public interests would be enhanced by a fee waiver, have been carefully considered. However, while these have some merit as general propositions ostensibly influencing compensation issues, they do not outweigh the reasons discussed above in support of the CSU's position that no fee waiver be provided in fiscal year 2006/2007.

It is virtually axiomatic that compromise is the essence of the collective bargaining process and that the contractual provisions as ultimately agreed upon reflect the give and take that characterizes collective bargaining. As such, the Chairperson acknowledges that he has entertained the thought of recommending something less than the full fee waiver sought by the Union or some gradual phased-in fee waiver program. However, given the parties' respective positions as espoused at the hearing and the factual context in which this impasse arose, it is concluded that any such recommendation would have little, if any, utility here.

RECOMMENDATION

For the reasons discussed above, it is the recommendation of the Chairperson that the fee waiver program not be implemented in fiscal year 2006/2007 for Unit 11 employees.

Respectfully submitted,

Walter F. Daugherty
Factfinding Panel Chairperson

Dated: April 17, 2007
Los Angeles, California

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United Auto Workers)	
Union)	

Re: Unit 11 (Academic Student Employees) Fee Waiver Benefit

Concurring Opinion of The California State University

The California State University concurs, without exception, with the Factfinding Report and Recommendations of neutral Factfinding Panel member Arbitrator Walter Daugherty.

With respect to the UAW dissenting opinion, the CSU finds that the UAW's arguments are based upon (1) false assertions of fact, (2) irrelevant issues, and (3) baseless accusations of improprieties by the CSU.

The single issue in this Factfinding proceeding is what, if any, new fee waiver benefit, should be provided in FY 2006/07 by the CSU to Unit 11 Academic Student Employees represented by the UAW. The neutral member of the Factfinding Panel recommended that no fee waiver benefit be implemented. The UAW dissent's main argument is based upon the erroneous and irrelevant assertion that the CSU failed to disclose to the Fact-finding panel that it spent \$4,283,100 less on Unit 11 salaries than it budgeted for Unit 11 salaries in Fiscal Year [FY] 2005/06.

This assertion is false for several reasons. The CSU does not specifically "budget" for Unit 11 salaries, or any other individual staff bargaining unit

salaries. The CSU's annual budget request to the Governor only contains an estimated cost for aggregate increases in overall staff salaries and their associated benefits costs. The annual State Budget Bill's appropriation to the CSU does not itemize a specific budgeted amount for Unit 11 salaries.

The CSU Budget Office calculates estimated Bargaining Unit compensation bases and compensation pool amounts only for the purpose of internal guidance to its collective bargaining representatives. These estimates are sometimes shared with bargaining unit representatives during the collective bargaining process to facilitate the bargaining process and do not represent promises by the CSU to actually expend the estimated amounts. Many intervening variables, such as staff growth or shrinkage, unexpected liabilities or savings, etc. may cause actual expenditures for a particular bargaining unit to be more or less than originally estimated.

Furthermore, the estimated costs for FY 2005/06 Unit 11 salaries and the actual amounts expended on Unit 11 salaries are irrelevant to the FY 2006/07 fee waiver benefit in dispute in this proceeding. Neither the CSU nor the UAW presented any evidence to the Panel concerning Unit 11 salaries for FY 2005/06. Moreover, the negotiations in the reopener bargaining did not include the FY 2005/06 time period. [The parties' agreement specifically provided that no new fee waiver benefit would be provided during FY 2005/06.]

The amounts the CSU Budget Office estimated during FY 2004/05 for the FY 05/06 Unit 11 compensation base and compensation pool have nothing to do with the issue of the fee waiver benefit for FY 2006/07. The CSU's position in this proceeding, sustained by neutral Factfinding Panel member Walter Daugherty, was that the fee waiver benefit sought by the Union represented an unacceptably large percentage increase [42%] of the compensation base for FY 2006/07.

The UAW's dissent does not directly or indirectly challenge that finding by the neutral Factfinding Panel member. Instead, the UAW asserts that the CSU misrepresented the Unit 11 compensation base for FY 2006/07 as \$34.8 million. While it is true that the compensation base was mistakenly presented by the CSU as \$34.8 million, the net impact of such inaccurate representation would have had no bearing on the outcome of the Report. Had the accurate lower amount of the compensation base been presented to the Factfinding Panel by the CSU, the projected percentage cost increase of the fee waiver benefit sought by the UAW would have been even larger and less acceptable to the CSU, as well as the neutral Fact-finder.

Finally, the UAW's dissent falsely assumes the CSU had the unilateral obligation to present evidence to the Panel concerning what had been budgeted and spent for FY 2005/06. The dissent implies the CSU's panel member and advocate were legally or ethically required to present such evidence.

On the contrary, there was no obligation on the part of the CSU advocate or the CSU's Panel member to present evidence to the Panel of the CSU's internal estimates of the Unit 11 compensation base or compensation pool for FY 05/06. As stated above, those estimates and amounts are and were irrelevant to the issue of the parties' dispute over a potential FY 06/07 Fee Waiver benefit. Although the CSU did discover after the Factfinding hearing that it had erroneously communicated the amount of the FY 06/07 Unit 11 compensation base estimate, the CSU immediately corrected this error by immediately notifying the UAW. During the parties' discussions of the Factfinding Report, the UAW had accurate information concerning the FY 06/07 estimated Unit 11 compensation base and compensation pool.

The UAW's claims of alleged misrepresentation by the CSU are without foundation and are no basis for undermining the well-founded recommendation of the neutral Factfinding Panel member.

Respectfully Submitted,

Gail Brooks
Successor CSU Factfinding Panel Member

Dated: May 3, 2007
Long Beach, California

UAW Dissent in PERB IMPASSE NO. LA-IM-3386-H (May 2, 2007)

INTRODUCTION

We strongly dissent from the fact finder's decision in the above referenced case. First and foremost, this report is flawed because CSU did not disclose critical financial information to the fact finder that we believe would in all likelihood have altered the fact finder's recommendation. Indeed, not only did CSU fail to disclose this information, but it provided misleading information in its stead. Next, we will briefly discuss why providing a full waiver of State University and Mandatory Campus fees to all academic student employees (ASEs) working an average of 8-10 hours per week or more is the appropriate finding in this case.

CSU FAILS TO DISCLOSE CRITICAL FINANCIAL INFORMATION

On April 20, 2007, the Union learned that CSU had not disclosed to the fact finding panel that Lt had budgeted for \$4,283,100 more than it spent in salaries for UAW-represented employees in academic year 2005/06. This amount of money is equal to the cost of providing nearly one-half of the fee waiver benefit the Union was seeking in academic year 2006/07 or 43% of the fee waiver that the Union is seeking for academic year 2007/08.

Not only did the CSU advocate at the fact finding hearing not provide this information, but Sam Strafacci, the CSU-appointed member of the fact finding panel did not correct the omission. Since this information came to light, Strafacci's position has been eliminated by the CSU administration and we cannot contact him directly about this omission.

The fact that CSU had budgeted for \$4,283,100 more than what it spent on UAW-represented employees' salaries at the end of academic year 2005/06 would likely have made a difference in the fact finder's recommendations for at least three reasons. First, the contract states that the CSU will provide the fee waiver benefit in 2006-07 if it "has received funding sufficient to implement the cost of this benefit." Clearly, CSU had received nearly one-half of the money needed to fund the cost of the fee waiver by July 1, 2006 when the Union contacted the University, per Article 9 of the contract, to ask if they would be providing the fee waiver benefit in 2006-07.

Second, one of the main reasons the fact finder recommended that there be no fee waiver benefit was his concern that CSU "avoid union 'whip saw' bargaining strategies" by not giving "compensation increases to one union that are significantly larger than the pattern settlement." During the hearing, the parties discussed that the recent CFA "tentative agreement" increased faculty

compensation more than 25%. The fact finder references this fact in his report stating that the funding required for the fee waiver benefit would "exceed 25 percent" of the compensation base for UAW-represented employees.

This picture changed dramatically, however, once it was revealed that CSU had budgeted for \$4,283,100 more than it spent in salaries for UAW-represented employees in academic year 2005/06. Funding the balance of the benefit in academic year 2006-07, as anticipated by the contract, would have cost approximately \$5 million more than it had budgeted in compensation base increases for UAW-represented employees in the previous academic year. \$5 million in additional funds would only have represented a 14% increase over the previous academic year's compensation base of \$34,770,000. Thus, the fact finder's concern that CSU not be subjected to the Union "whip saw" would have been amply met had he known the full information about CSU's budgeted compensation base increases for UAW-represented employees.

Third, the fact finder acknowledges that he has "entertained the thought of recommending something less than the full fee waiver sought by the Union or some gradual phased-in fee waiver program. However, given the parties' respective positions as espoused at the hearing and the *factual context* in which this impasse arose, it is concluded that any such recommendation would have little, if any, utility here." (emphasis added)

If CSU had informed the fact finding panel of the \$4,283,100, I feel the fact finder would have recommended that CSU provide the full fee waiver benefit, or at the very least, that I could have helped the fact finder locate a compromise along the lines of what he was entertaining.

To date CSU has not explained where the \$4,283,100 allocated in the budget actually went. CSU should be held to strict fiscal accountability, and not be able to play games by shifting this money for unknown purposes. The public believed the money was budgeted for this unit and should be spent on this unit,

JUSTIFICATION FOR FULL FEE WAIVER BENEFIT

The primary reason for providing the full fee waiver to ASEs is economic equity and the financially devastating impact of CSU fee hikes on ASEs.

The median annual salary, after paying fees, for 97% of the ASEs in the UAW-represented unit at CSU is not sufficient to meet the basic costs identified by CSU of attending the University. The median salary for the vast majority of ASEs falls

more than \$10,000 below the basic costs of going to school as estimated by the CSU administration.

The main reason for this discrepancy is that the cost of fees at CSU is skyrocketing. In 1990, full-time undergraduates paid \$920 per year to attend CSU. By 2006, that cost had ballooned by 348% to \$3199. The Union cannot negotiate over the amount of fees, but, in order to protect its members from losing all the economic gains made in bargaining to CSU's unilateral fee hikes (which ASEs must pay as a condition of holding their jobs), it needs to have a full waiver of State University and Mandatory Campus fees.

This stark economic problem, as testified to by both the Union and University, has and will continue to fuel severe dissatisfaction and unrest among ASEs—a group of employees who provide most of the face-to-face instructional services that make CSU such a great university—until it is redressed.

What makes this problem worse is that CSU also lags behind its competitor institutions around the country, including the University of California, which all provide fee waivers to their ASEs,

The fact finder provides, as a reason to ignore the prevailing practice of providing fee waivers at the various comparable institutions such as the University of California, that; "as pointed out by the Employer, the make up of the bargaining unit at the UC system differs from Unit 11, for most UC employees are doctoral students, whose employment is of much longer duration than this Unit's employees and generally in a research environment"

This statement does not address the wealth of contradictory evidence introduced by the Union. First, the ASE job descriptions at UC introduced by the Union say nothing about and have no relation to research. ASEs at UC, according to these descriptions, teach, tutor and grade just as their counterparts at CSU do. Second, CSU provided no evidence that ASEs at UC work in the unit longer than their counterparts at CSU. On the contrary, the only testimony from a UC TA was that she only taught 2 quarters in her entire career (as compared to the 2 or more years testified to by CSU ASEs). Moreover the Union introduced testimony that UC ASEs typically work for a shorter period than their counterparts at CSU because they quickly move on to positions outside the unit (e.g., research assistant jobs) or get fellowships and grants. Finally, the fact that many ASEs at UC are doctoral *students* is irrelevant to the work they perform as *employees*—which is identical to that of their counterparts at CSU.

Another of the fact finder's reasons to recommend that CSU not provide a fee waiver is: "that no other CSU bargaining unit receives a fee waiver comparable to that proposed by the Union and that bargaining with some units has been ongoing for some 25 years."

While it may be true that other CSU bargaining units do not receive the same fee waiver benefit sought by the Union, CSU does not require that any of the employees in its other units be students as a condition of holding their jobs. It is exactly this exceptional nature of ASE job requirements that makes the full fee waiver a standard and necessary benefit for this unit. CSU employees in other bargaining units do not, as a condition of their jobs, have to enroll in school and pay fees that are unilaterally set by management. Therefore, the wage and other compensation increases employees in other CSU units win through collective bargaining are not taken away by increases in fees that they must pay to hold their jobs in the first place.

Due to the nature and needs of different bargaining units the nature of the benefits will inevitably vary. The members of the academic student employee unit do not receive benefits, such as pension, that other CSU units do. It is an unfair comparison to look to other units' fee waiver provisions to determine what is fair for this unit. A more appropriate analysis would be what academic student employees get elsewhere. There the evidence is clear that the fee waiver is a key benefit in contracts for academic student employees at other universities.

Finally, while the fact finder acknowledges that CSU has the money to provide the fee waiver benefit sought by the Union, he states that: "the reality of public sector bargaining is that to avoid union "whip saw" bargaining strategies employers in large multi-unit jurisdictions rarely give compensation increases to one union that are significantly larger than the pattern settlement. While as pointed out by the Union, the salary increases recently negotiated with the Faculty Unit exceed the funds provided in the "Governor's Compact," it does not appear that any CSU unit was given a total compensation increase of the percentage here sought by the Union."

The argument that a group of historically under-compensated employees should be denied a standard benefit in their industry because such a benefit would be a significant increase in their relatively small compensation pool is not a persuasive argument that CSU should not pay for the fee waiver benefit. Moreover, the fact finder's relatively greater concern for CSU's vulnerability at the bargaining table is overstated and misplaced.

CONCLUSION

For the reasons set out above, we believe there to be urgency for the parties to reach agreement on a resolution to the fee waiver dispute. ASEs are roiled by their substandard working conditions with respect to the lack of a fee waiver and the fact that fees continue to sky-rocket— at this time CSU is planning to increase the State University Fee by 10% next year and is projecting a 5% increase in the Mandatory Campus Fees.

The fact finder indicated that recommending a compromise would lack "utility" given the "factual context" in which CSU had led the panel to believe the fee waiver dispute had arisen. However now that we are aware that CSU had budgeted for \$4,283,100 more than it spent in salaries for UAW-represented employees in academic year 2005/06, at least one obvious compromise suggests itself. According to CSU, the cost of a 100% fee waiver in academic year 2007/08 is \$9,987,000. Applying the \$4,283/100 to a fee waiver benefit for next academic year would provide a wavier of 43% of State University and mandatory campus fees.

Thus, a workable resolution to the fee waiver problem would be:

Effective Fall 2007, the CSU shall waive 43% of State University and Mandatory Campus fees for all ASEs working .2+ time-base or 120 hours (semester campuses)/ .25+ time-base or 110 hours (quarter campuses) in any combination of bargaining unit appointments.

Such a resolution would give critical immediate relief to ASEs from the ongoing CSU fee hikes and provide an opportunity for the parties to continue bargaining to improve this benefit in successor negotiations scheduled for 2008.

Respectfully submitted,

Ray Ruiz
International Representative, UAW Region 5
May 02, 2007